

DEC 16 2005

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR MARTINEZ-PEREZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74055

Agency No. A77-166-551

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Oscar Martinez-Perez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider its previous order denying his application for cancellation of removal and denying

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** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his motion to reopen proceedings based on new evidence. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of both a motion to reopen and a motion to reconsider, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), and we deny the petition for review.

The BIA did not abuse its discretion in denying Martinez-Perez's motion to reconsider because its interpretation of the exceptional and extremely unusual hardship standard found in 8 U.S.C. § 1229b(b)(1)(D) fell within the broad range of acceptable interpretations. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1006 (9th Cir. 2003). As the motion to reconsider did not specify any other factual or legal error, the BIA acted within its discretion in denying it. *See* 8 C.F.R. § 1003.2(b)(1).

The BIA did not abuse its discretion in denying Martinez-Perez's motion to reopen because the BIA considered the additional evidence submitted and acted within its broad discretion in determining that the evidence was not material to establish eligibility for cancellation of removal. *See* 8 C.F.R. § 1003.2(c)(1). *See also Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (the BIA's denial of a motion to reopen shall be reversed only if it is arbitrary, irrational, or contrary to law) (internal quotation marks and citations omitted).

PETITION FOR REVIEW DENIED.